

Introduced by Senator Hill

December 5, 2016

An act to add Chapter 15 (commencing with Section 54999.8) to Part 1 of Division 2 of Title 5 of the Government Code, relating to law enforcement agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 21, as introduced, Hill. Law enforcement agencies: surveillance: policies.

Under existing law, a city or county is empowered to perform duties including providing for public safety and law enforcement. A city or county is authorized, either directly or indirectly, to prescribe policies and regulations for law enforcement agencies under its jurisdiction.

This bill would, beginning July 1, 2018, require each law enforcement agency, as defined, to submit to its governing body at a noticed hearing, open to the public, a proposed plan for the use of all surveillance technology and the information collected, as specified. The bill would require that the law enforcement agency submit an amendment to the surveillance plan, pursuant to the same open meeting requirements, for each new type of surveillance technology sought to be used.

The bill would make legislative findings in support of these provisions.

Because this bill would impose additional requirements on local law enforcement agencies, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) While law enforcement agencies increasingly rely on
4 surveillance technologies because those technologies may enhance
5 community safety and aid in the investigation of crimes, those
6 technologies are often used without any written rules or civilian
7 oversight and the ability of surveillance technology to enhance
8 public safety should be balanced with reasonable safeguards for
9 resident's civil liberties and privacy.

10 (b) Promoting a safer community through the use of surveillance
11 technology while preserving the protection of civil liberties and
12 privacy are not mutually exclusive goals, and policymakers should
13 be empowered to make informed decisions about what kind of
14 surveillance technologies should be used in their community.

15 (c) Decisions about whether to use surveillance technology for
16 data collection and how to use and store the information collected
17 should not be made by the agencies that would to operate the
18 technology, but by the elected bodies that are directly accountable
19 to the residents in their communities who should also have
20 opportunities to review the decision of whether or not to use
21 surveillance technologies.

22 SEC. 2. Chapter 15 (commencing with Section 54999.8) is
23 added to Part 1 of Division 2 of Title 5 of the Government Code,
24 to read:

25
26 CHAPTER 15. SURVEILLANCE POLICIES FOR LAW ENFORCEMENT
27

28 54999.8. The following definitions apply for purposes of this
29 chapter:

30 (a) "Governing body" means the elected body that oversees the
31 law enforcement agency or the law enforcement agency's
32 corresponding geographic area in the case of a county sheriff.

1 (b) “Law enforcement agency” means any police department,
2 sheriff department, college campus, or special district agency
3 created to enforce the law and prevent crime.

4 (c) (1) “Surveillance technology” means any electronic device
5 or system primarily intended to monitor and collect audio, visual,
6 locational, thermal, or similar information on any individual or
7 group. This includes, but is not limited to, drones with cameras or
8 monitoring capabilities, automated license plate readers,
9 closed-circuit cameras/televisions, international mobile subscriber
10 identity (IMSD) trackers, global positioning system (GPS)
11 technology, radio-frequency identification (RFID) technology,
12 biometrics-identification technology, and facial-recognition
13 technology.

14 (2) “Surveillance technology” does not include standard
15 electronic devices or systems that have a primary function other
16 than monitoring or collecting audio, visual, locational, thermal, or
17 similar information on any individual or group. This includes, but
18 is not limited to, standard law enforcement agency computers and
19 software, fingerprint scanners, ignition interlock devices, cell
20 phones, two-way radios, or other similar electronic devices.

21 54999.85. (a) On or before July 1, 2018, a law enforcement
22 agency shall submit to its governing body at a properly noticed
23 public meeting on the regular, nonconsent calendar, a Surveillance
24 Use Policy which shall be in writing and made publically available
25 prior to the public hearing. The policy shall pertain to any
26 surveillance technologies used by the law enforcement agency and
27 shall include the following:

28 (1) Types of surveillance technology used by the law
29 enforcement agency.

30 (2) Authorized purposes for using surveillance technology.

31 (3) Types of data that can be and is collected by the surveillance
32 technology.

33 (4) A description of the job title or other designation of
34 employees and independent contractors who are authorized to use
35 the various types of surveillance technology or to access data
36 collected by the surveillance technology. The policy shall identify
37 the training requirements necessary for those authorized employees
38 and independent contractors.

39 (5) Title of the official custodian, or owner, of the surveillance
40 technologies responsible for implementing this section.

1 (6) A description of how the surveillance technologies will be
2 monitored to ensure the security of the information and compliance
3 with applicable privacy laws.

4 (7) The length of time information by surveillance technologies
5 will be retained, and a process to determine if and when to destroy
6 retained information.

7 (8) Purposes of, process for, and restrictions on, the sale, sharing,
8 or transfer of information to other persons and whether and, if so,
9 how the collected information can be accessed by members of the
10 public, including criminal defendants.

11 (b) A law enforcement agency shall not acquire surveillance
12 technology unless approved by its governing body by adoption,
13 at a regularly scheduled public meeting held pursuant to the Ralph
14 M. Brown Act (Chapter 9 (commencing with Section 54950) of
15 Part 1 of Division 2 of Title 5 of the Government Code), of a
16 resolution or ordinance authorizing that acquisition and
17 incorporating the Surveillance Use Policy required by this section.

18 (c) If a law enforcement agency intends to acquire a new type
19 of surveillance technology after the adoption of the policy required
20 by subdivision (a), the agency shall amend the policy to include
21 the new type of technology and submit the amendment to its
22 governing body for approval consistent with subdivision (b). The
23 amendment shall be made within 10 days of the acquisition of the
24 technology and shall be submitted to the governing body at a
25 properly noticed public meeting on the regular, nonconsent
26 calendar and shall be in writing and made publically available
27 prior to the public hearing.

28 (d) If, before July 1, 2018, a law enforcement agency has
29 implemented the requirements for automatic license plate readers
30 pursuant to Title 1.81.23 (commencing with Section 1798.90.5)
31 of Part 4 of Division 3 of the Civil Code or for cellular
32 communications interception technology pursuant to Article 11
33 (commencing with Section 53166) of Chapter 1 of Part 1 of
34 Division 2 of Title 5 of the Government Code, the law enforcement
35 agency shall include the required information as part of the
36 Surveillance Use Policy required by subdivision (a).

37 (e) Nothing in this section shall be construed to prohibit a
38 governing body from adopting additional protocols as they relate
39 to surveillance technology.

1 54999.9. A law enforcement agency shall, by July 1, 2018,
2 develop a process that is consistent with current disciplinary
3 procedures for disciplining agency employees who intentionally
4 use surveillance technology in a manner that is specifically
5 prohibited in the approved surveillance use policy.

6 SEC. 3. If the Commission on State Mandates determines that
7 this act contains costs mandated by the state, reimbursement to
8 local agencies and school districts for those costs shall be made
9 pursuant to Part 7 (commencing with Section 17500) of Division
10 4 of Title 2 of the Government Code.